

HOWARD BERGER
On his own behalf

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

In re

BERNARD L. MADOFF,

Debtor.

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Howard Berger hereby objects to the Notice of Trustee's Determination of Claim dated December 3, 2010 ("Determination Letter"), attached. The Trustee's Determination Letter pertains to Customer Claim No. 006051. Mr. Berger objects to the Trustee's Determination Letter, as described herein, to preserve all rights, claims, and defenses should the following situations occur.

BACKGROUND

1. On or about February 27, 2009, Howard Berger submitted to the BMIS Trustee a customer claim for a portion of a BLMIS account, Acct. No 1-ZB511. Howard Berger's investment in BLMIS was via an IRA account through the custodian Fiserv, to Fern Creek, LP, which is the owner of BLMIS Account number 1-ZB511 in the name of Ostrin Family

Partnership. Howard Berger opened the account with Fern Creek and made his first deposit on June 28, 2008.

2. On December 3, 2009, the BMIS Trustee sent Howard Berger a Determination Letter disallowing the Claim, Number 006051, due to the fact that Howard Berger is not a customer of BLMIS. *See* Determination Letter.

3. Mr. Berger hereby objects to the Determination Letter for the reason described below and to preserve all rights with regard to this Claim in the event that any of the following should occur.

GROUND FOR OBJECTION

4. The BLMIS Trustee has encouraged all those who lost money due to the Madoff Ponzi scheme to file customer claim forms. This includes investors such as Howard Berger, who invested “indirectly” with BLMIS. The BLMIS Trustee has clearly contemplated a scenario whereby “indirect” investors, such as Howard Berger, would be entitled to have their claims allowed and/or paid in this proceeding. To the extent that any such “indirect” claims are allowed and/or “indirect” claimants are deemed “customers” under SIPA by virtue of the present statute, any amended statute, any decision or ruling of any court or administrative agency, or any decision by SIPC or the Madoff Trustee, Howard Berger reserves the right to challenge any determination of her claim by the BLMIS Trustee.

RELIEF REQUESTED


5. For the reasons stated herein, the Howard Berger Customer Claim should be held in abeyance pending the potential occurrences of any of the scenarios set forth above. In the event any of those scenarios should occur, the Howard Berger Customer Claim, Number 006051 should be allowed in its entirety.

6. Howard Berger requests such other relief as may be just and equitable.

CONCLUSION

7. Howard Berger reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of the right to object on any additional grounds.

Dated: December 30, 2010



Howard Berger
Account Claim Number 006051
27 Holiday Point Road
Sherman, CT 06784
Tel: (860) 355-9837

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

December 03, 2010

HOWARD BERGER
27 HOLIDAY POINT RD
SHERMAN, CT 06784

Dear HOWARD BERGER:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim designated as Claim No. 006051:

Based on a review of available books and records of BLMIS by the Trustee's staff, you did not have an account with BLMIS. Because you did not have an account, you are not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 78fff (2). Accordingly, your Claim for securities and/or a credit balance is **DENIED**.

PLEASE TAKE NOTICE: If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court **and** the Trustee within **THIRTY DAYS** after December 03, 2010, the date on which the Trustee mailed this notice.

¹ Section 78fff(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78fff(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

PLEASE TAKE FURTHER NOTICE: If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for
the Southern District of New York
One Bowling Green
New York, New York 10004

and

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
Attn: Claims Department
45 Rockefeller Plaza
New York, New York 10111

A handwritten signature in black ink, reading "Irving H. Picard". The signature is fluid and cursive, with the first name "Irving" and last name "Picard" clearly legible.

Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

Transmittal Cover Sheet

To: Clerk of the United States
Bankruptcy Court for the
Southern District of New York

Company:
Phone:
Fax:

From: Linda and Howard Berger
Company:
Phone: 860-355-9837
Fax: 860-210-2192

Date: December 30, 2010

**Pages including this
cover page:**

<p>This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communications is hereby prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.</p>
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Comments:

RE: BLMIS Claim # 006051 for Howard Berger
BLMIS Claim # 005990 for Linda Berger

This packet includes 2 separate Objections letters, one for Howard Berger and one for Linda Berger. Please timely file and process them separately.

Thank you,
Linda and Howard Berger